APPEAL NO. 041120
FILED JUNE 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 21, 2004. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to and include the left knee, including the diagnosed patellofemoral syndrome. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, objecting to a medical report attached to the claimant's appeal and otherwise seeking affirmance.

DECISION

Affirmed.

The claimant attached a medical report dated April 28, 2004, from the Texas Workers' Compensation Commission-appointed designated doctor. The designated doctor was appointed to make a determination regarding maximum medical improvement (MMI) and the claimant's impairment rating (IR), and the examination took place after the date of the CCH. We note that the claimant did not request a continuance, nor did she request that the hearing officer keep the record open so that this report could be considered. We further note that while the designated doctor's report would be afforded presumptive weight in a dispute over MMI and IR, such is not the case in a dispute over extent of injury.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Since the attached report was created after the date of the CCH, the claimant clearly could not have had knowledge as to its content at that time. However, we cannot say that its consideration by the hearing officer would probably produce a different result. Accordingly, we decline to consider this document on appeal.

Extent of injury is a question of fact. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666

S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Although there was conflicting evidence, the hearing officer was persuaded by the medical evidence presented by the carrier that the claimant's compensable injury does not extend to and include the above-listed conditions. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge